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IN THE

Supreme Court of the United States

October Term, 1962
No. 686

RALPH R. BENSON,
Petitioner,

vs.

STATE OF CALIFORNIA,
Respondent.

REPLY TO RESPONDENT.

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IN THE

Supreme Court of the United States

October Term, 1962

No. 680

RALPH R. BENSON,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

REPLY TO RESPONDENT.

ARGUMENT.

RESPONDENT'S MISCONCEPTIONS.

I.

Education Does Not Affect Petitioner's Standing To Rely on Entrapment.

As applied to the facts of petitioner's case the citation of *Crooker v. California* (1958), 357 U. S. 433, 2 L. Ed. 2d 1448, 78 S. Ct. 1287 and quotation from the opinion of California District Court of Appeal that

> ". . . appellant not thus stand aside and let others determine where the truth lay. . . ."

argues that state agents may act more deceptively against an educated defendant and that education raises a duty to investigate.

The above proposition could not have been tested in petitioner's California proceedings because he was denied standing to rely on the defense of entrapment.

II. A. B. C. D.

Entrapment by Deception Raises a Federal Question.

Respondent's argument under subpoints A. B. C. and D. misconceives that the defense of entrapment is only appropriate to situations where the defendant is persuaded to commit the crime. In such cases "evil" intent arises because it was induced by the persuasion of the police agents. Respondent fails to distinguish the case where police deceptions and misrepresentations cause a defendant to act but such act would only be criminal if done with specific intent. *California Insurance Code* 556 provides in part:

> "It is unlawful to: (a) Present or cause to be presented any false or fraudulent claim . . ."

Petitioner presented evidence that he did not know and that no one advised him that the claims were false or fraudulent. Because the trial court, the District Court of Appeal and the Respondent still fail to distinguish these types of entrapment, petitioner was and still is denied any standing as to the defense of entrapment.

People v. Benford (1959), 53 Cal. 2d 1 quoted by respondent considers the situation where defendant is persuaded to adopt a criminal intent and thereafter commits a criminal act. If under the facts of *Hansford v. United States* (1962), 303 F. 2d 219, which were of the type considered in the *Benford* case, the court required that the accused be given standing to raise

defense of illegal entrapment although he denied commission of the offense, such a rule is more appropriate in the instant situation where petitioner proved that he would not have done the acts alleged but for the deceptions and misrepresentations of the police agents.

In the instant case the court enlarged the requirement of admitting the commission of the act alleged to a requirement of admitting the commission of the crime.

II. E.

Entrapment Was Raised in the Trial Court.

Respondent argues "it should be noted that the pages referred to by petitioner merely relate to the conspiracy count." However the substantive counts could not have been sustained on any basis other than finding petitioner a party to the conspiracy. The prosecution's case stood or fell on proof of petitioner's participation in the conspiracy alleged.

In his motion for a new trial, petitioner's counsel argued entrapment by misrepresentation in substance. Use of the label "entrapment" is not required.

However, the fact that the California District Court of Appeal considered the defense of entrapment resolves the question whether entrapment was properly presented in the California Courts.

> "There can be no question as to the proper presentation of a federal claim where the highest state court passes on it. See *Manhattan Life Insurance Company vs. Cohen*, 234 U. S. 123, 134."
>
> *Raley v. Ohio*, 360 U. S. 423, 79 S. Ct. 1257, 3 L. Ed. 2d 1344.

III.

Concession Against Petitioner of Prima Facie Proof of Conspiracy Denied Him Due Process.

Respondent's interpretation of the portion of the opinion of the California District Court of Appeal quoted and discussed on pages 12, 13 and 14 is not that which the District Court of Appeal intended. This is evidenced by the fact that it affirmed admission of fifteen conversations against petitioner which would have been hearsay as to him in absence of *prima facie* proof of his participation in conspiracy.

Respondent argues that the District Court of Appeal was only referring to *prima facie* proof of conspiracy between petitioner's co-defendants. However, without the unwarranted statement that petitioner made a concession of *prima facie* proof of conspiracy in its opinion, there could have been no basis for the admission of the conversations against the petitioner. Petitioner argued lack of *prima facie* proof of conspiracy at every stage of his proceedings and is denied a fair consideration of his case by the District Court of Appeal if the latter bases its opinion on fiction rather than evidentiary fact.

IV.

California Courts Have Not Construed the Phrase in Section 556 Insurance Code in Any Previous Criminal Case and Applying a Construction to Petitioner Contrary to Their Construction of This Phrase in Civil Cases Have Denied Him Due Process and Equal Protection of Law.

Respondent's claim that *People v. Grossman*, 28 Cal. App. 2d 93 and *People v. Reed*, 190 Cal. App. 2d 344 have interpreted Section 556 to apply to liability insurance is inaccurate. In neither case did the appellant raise at trial or argue on appeal the question whether the statutory phrase "claims under a contract of insurance" embraced tort claims.

V.

Objection Was Duly Made on Constitutional Grounds to Evidence Secured by Entry Gained by Misrepresentation and Deception as to Testimony of Prosecutor's Agents on Their Difect Examination.

Petitioner objected to state court's admission of conversations that took place in his office following entry gained by police by means of deception and misrepresentation. Some of the conversations were recorded and used in cross-examination. But the objection went to the testimony of the police agents on direct. Evidence admitted during cross-examination did not establish any of the counts against petitioner. Nor does a fair reading of the record show that petitioner was impeached in any respect by the admission in evidence of the recording during cross-examination.

The record in the instant case discloses affirmative misrepresentation of the type recently discussed in *Wong Sun v. U. S.*, 31 Law Week 4079.

Respectfully submitted,

RALPH R. BENSON,
Petitioner, Pro. Se.